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BOARD OF OPTOMETRISTS

JUL 1 6 2008

By:

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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF OPTOMETRISTS

VIEWE MARKED OF THE

IN THE MATTER OF THE SUSPENSION OR REVOCATION OF THE LICENSE OF

LEE HERSH, O.D.

LICENSE NO. 27OA0548600

TO PRACTICE OPTOMETRY IN THE STATE OF NEW JERSEY

Administrative Action

FINAL ORDER OF DISCIPLINE

This matter came before the New Jersey State Board of Optometrists ("Board") upon information that the respondent has failed to complete a total of fifty (50) credits of continuing education in approved optometry courses during the period of May 1, 2005 to April 30, 2007, as required for the 2007-2009 biennial license renewal pursuant to N.J.S.A. 45:12-9.3 and N.J.A.C. 13:38-7.3. Based upon information received and which the Board has reviewed, the following preliminary findings are made:

FINDINGS OF FACT

- 1. Respondent is an optometrist in the State of New Jersey and has been a licensee at all times relevant hereto.
- 2. On April 30, 2007 the respondent returned his completed application for renewal of license as an optometrist in the State of New Jersey in which respondent answered "yes" to the question asking for affirmation as to whether or not he completed the required continuing education credits by April 30, 2007.
- 3. On the 15th day of June, 2007, the Board of Optometrists initiated a random audit of renewal applications for the 2007-2009 period, asking licensees to submit proof with regard to the satisfaction of continuing education requirements for the biennial renewal period, <u>i.e.</u>, fifty (50) credit approved hours which includes twenty-five (25) credits in general optometric education and twenty-five (25) credits in courses or programs classified as therapeutic pharmaceutical agents ("TPA").
- 4. On or about August 22, 2007 in response to the audit he supplied a written request to the Board requesting a waiver of all 50 continuing education credits prior to his biennial renewal based on his poor medical condition and requesting six months to complete all continuing education requirements. Included in this correspondence was a letter from Dr. Scott Druckman, D.O. outlining Dr. Hersh's medical problems.
- 5. The Board requested that Dr. Hersh appear for an investigative inquiry to address whether his medical problems prohibited him from discharging the functions of a licensed optometrist. An investigative inquiry was scheduled for October 17, 2007 but was adjourned at the

request of Dr. Hersh and rescheduled for November 21, 2007.

- 6. On November 21, 2007 Respondent appeared without his attorney, Scott Marcus, Esquire and informed the Board that his medical condition did not prevent him from undertaking and discharging the functions of a licensed optometrist. Respondent testified that in the biennial period in question he was out of work due to medical issues only about ten (10) days.
- 7. At the inquiry, respondent confirmed that he had not attained any of the 50 requisite continuing education credits by April 30, 2007 as required for renewal of his license to practice optometry. He also informed the Board that he had financial issues that resulted in his filing for Chapter 13 Bankruptcy action.
- 8. At the time of the inquiry, the proofs submitted by the respondent to the Board documented successful completion of 35 credit hours of continuing education all of which were obtained after April 30, 2007. Therefore, Respondent continued to be deficient fifteen (15) credit hours of continuing education as of November 21, 2007 and had not satisfied any of his continuing education obligations in the relevant time period.

CONCLUSIONS OF LAW

1. Respondent has not satisfied the requirements of N.J.S.A. 45:12-9.3 and N.J.A.C. 13:38-7.3 with regard to the completion of the appropriate number of approved continuing education credit hours and is therefore subject to sanctions pursuant to N.J.S.A. 45:1-21(h), failure to comply with the provisions of an act or regulation administered by the Board, which constitutes grounds for suspension or revocation of any certificate, registration or license, and grounds for sanction pursuant

to N.J.S.A. 45:1-25.

2. Respondent attested to the completion of 50 continuing education credits by April 30, 2007 on the biennial renewal application but has submitted a request for a waiver of the full amount of the credits due to medical issues. In considering whether to grant the waiver the Board took into consideration the fact that the licensee had continued to actively practice optometry during the period in question. Thus, the Board determined that since he was actively practicing optometry it was not in the best interests of the public safety and welfare to grant him a waiver of the continuing education requirements. The Board also determined that he failed to obtain any of the requisite continuing education credits required for renewal of his license to practice optometry during the relevant time period. Therefore, respondent is subject to sanctions pursuant to N.J.S.A. 45: 1-25 as he has failed to comply with the requirement of N.J.S.A. 45: 12-9.3 requiring the prerequisite amount of continuing education credits be obtained by an optometrist holding an active license to engage in the practice of optometry and N.J.S.A. 45:1-21(b) in that he engaged in the use or employment of dishonestly, deception or misrepresentation, which constitutes grounds for suspension or revocation of any certificate, registration or license.

DISCUSSION

Based on the foregoing findings and conclusions, a Provisional Order of Discipline suspending respondent's license to practice optometry in the State of New Jersey was entered on February 20, 2008 and a copy was served on the respondent. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30th business day following entry unless respondent requested a modification or dismissal of the state Findings of Facts and Conclusions of Law by

submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting respondent's request for consideration and reasons therefore.

On August 22, 2007 the Board received correspondence from the respondent requested a waiver of all 50 continuing education credits prior to his biennial renewal based on his poor medical condition. However during an investigative inquiry on November 21, 2007, Respondent informed the Board that his medical condition did not prevent him from undertaking and discharging the functions of a licensed optometrist. Upon review of the information submitted the Board has determined that the respondent had obtained thirty five (35) credits within the biennial period. On or around May 5, 2008 Respondent completed the remaining fifteen (15) credits. Respondent submitted proof of completion of fifteen (15) continuing education credits on April 21, 2008.

THEREFORE, IT IS ON THIS 16 TO DAY OF JULY, 2008, ORDERED:

1. Respondent is remitting payments of the civil penalty, which amounts to a total of Two Thousand (\$2,000) in installment payments. Respondent shall pay a civil penalty of \$15,000 pursuant to N.J.S.A. 45:1-25. \$13,000 of which is to be stayed and \$2000 which is to be paid in installment payments as set forth herein. This amount consists of \$10,000 for violation of N.J.S.A. 45:12-9.3, N.J.A.C. 13:38-7.3 and N.J.S.A. 45:1-21(h) as evidenced by his failure to completely satisfy the continuing education requirements and \$5,000 for violation of N.J.S.A. 45:1-21(b) for falsely affirming on the license renewal application that the continuing education credits had been

satisfied prior to April 30, 2007. \$9000.00 is stayed toward the violation of N.J.S.A. 45:12-9.3,

N.J.A.C. 13:38-7.3 and N.J.S.A. 45:1-21(h) and \$4000 is stayed on the violation of N.J.S.A. 45:1-

21(b) based on the mitigating evidence concerning his financial situation. The remaining \$2000.00

shall be paid in installment payments over an 18 month period which shall begin 30 days after the

entry of this order. Payment is to be remitted by means of a certified check or money order, payable

to the New Jersey State Board of Optometrists. Such payment is to be sent to the Board of

Optometrists, attention Executive Director at 124 Halsey Street, P.O. Box 45012, Sixth Floor,

Newark, New Jersey 07101

2. Respondent submitted proof of having completed the requisite fifty (50) hours of

continuing education credits upon submission of additional proofs supporting the completion of

fifteen (15) continuing education credits on April 28, 2008 and June 18, 2008 respectively. These

continuing education credits are not to be used to renew respondent's license to practice optometry

for the 2009-2011 renewal period.

3. Respondent's license to practice optometry is active and shall not be suspended by

operation of this order as he has submitted proofs that he has fully complied with the continuing

education requirements.

NEW JERSEY STATE BOARD OF OPTOMETRISTS

By:

Leonard Steiner, O.D.

President

Via Certified and Regular Mail

CM: RRR